Netherlands nationality law

NATIONALITY LAWS IN THE EUROPEAN UNION

LE DROIT DE LA NATIONALITÉ DANS L'UNION EUROPÉENNE

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PREFACE

1. *Citizenship in the Member States of the European Union and the issues of domestic and international law which arise out of it, both from the theoretical and practical point of view, as far as the interpretation and enforcement of the respective rules are concerned, are the topics which have given rise to a research project amongst a number of European lawyers. The result is the collection of essays published in this volume.*

The purpose of this research is to analyse and comment on the different national regulations, on their construction and evolution, and chiefly, on the most topical issues such as the acquisition and loss of citizenship, the consequences of filiation and marriage, the phenomenon of dual or multi-nationality, the determination of the « status civitatis » and its consequences in fields like the application of the conflict and jurisdiction rules and the recognition of rights and duties (political rights, military service).

2. *This volume does not claim to be a collection of laws or some sort of "Code of Citizenship". Its purpose is merely to provide a selection of essays aiming, on the one hand, at acquainting practitioners or scholars with the laws and practice of fifteen European countries, and on the other hand, at stimulating reflections on different legal realities and the search for similarities and discrepancies in order to have a better and deeper knowledge and as much information as possible to draft both at a national and international level. It is true that, especially at international level, significant progress has been achieved by the Council of Europe by promoting the drafting of a Convention (supplemented by two protocols), whilst a fresh draft of the Convention is under way* (1). *Nevertheless there is not a sufficient consensus for this subject to be incorporated in a universally accepted regulation.*

Although uniform or simply harmonised solutions are still difficult to achieve, there may be a possible way towards closer co-operation within the judicial European Union.

The lack of specific competence of the Union (as well as of the Community's) in the field of citizenship does not mean that such a way must be barred. Although Member States officially claim as theirs the exclusive competence to determine the

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(1) See p. 20 *et seq.*

GERARD-RENÉ DE GROOT and CARLOS BOLLEN (*)

NETHERLANDS NATIONALITY LAW

1. Preliminary remarks.

The constitutional structure (1) of the Kingdom of the Netherlands (Koninkrijk der Nederlanden) as it is known today was formed when in 1954 the Netherlands transformed its relation with the former colonies Surinam and the Netherlands Antilles into a quasi-federal structure. The legal basis for this structure was the Charter for the Kingdom of the Netherlands (Statuut voor het Koninkrijk der Nederlanden), which came into force on 29 December 1954. In 1975 Surinam became independent and left the Kingdom, in 1986 Aruba separated itself from the other islands of the Netherlands Antilles and obtained the status of a separate country within the Kingdom. The Kingdom of the Netherlands thus consists of three countries since 1986: the European part of the Kingdom

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(1) See on the constitutional structure: J.M.J. CHORUS, P.H.M. GERVER, E.H. HONDIUS, A.K. KOEKKOEK (eds.), *Introduction to Dutch law for foreign lawyers*, Kluwer, Deventer, 1993; CONSTANTIJN A.J.M. KORTMANN, PAUL P.T. BOVEND'EERT, *The Kingdom of the Netherlands, An Introduction to Dutch Constitutional Law*, Kluwer, Deventer, 1993; BERT VAN ROERMUND (ed.), *Constitutional review - Verfassungsgerichtsbarkeit - Constitutionele toetsing; Theoretical and comparative perspective*, Kluwer, Deventer, 1993.

(commonly known as and hereafter named: the Netherlands), the Netherlands Antilles and Aruba. Each country within the Kingdom has its own constitution (Grondwet van Nederland, Staatsregeling van de Nederlandse Antillen and Staatsregeling van Aruba), to which the Charter is superior (art. 5 para 2 Charter). The King (Koning) of the Netherlands is the head of state of the Kingdom, in the overseas countries he is represented by a governor (gouverneur). The procedures to be followed in Kingdom affairs, which are dealt with in cooperation between the three countries, are laid down in the Charter. Matters of the Kingdom are matters like foreign relations, defence, nationality (art. 3 *sub* c Charter) and the general policy concerning aliens. Special organs are created to deal with Kingdom matters, usually the Netherlands organs extended with representatives from the other countries. The most important of these organs is the Council of Ministers of the Kingdom. It consists of the Netherlands Council of Ministers completed by two ministers plenipotentiary, one from the Antilles and one from Aruba. Statutes made for the whole Kingdom take the form of a Kingdom Statute (Rijkswet).

The (European part of the) Netherlands are an unitary state, the form of government is that of a constitutional monarchy. The title to the throne is hereditary and vests in the legitimate descendants of King William 1, Prince of Orange-Nassau (art. 24 Constitution). Detailed rules on succession to the throne are laid down in the Constitution, as is the state structure. The monarchy of the Netherlands has a parliamentary system. The parliament or States General (Staten-Generaal), as it is called officially, consists of two houses: the Second Chamber (Tweede Kamer) and the First Chamber (Eerste Kamer). The Second Chamber consists of 150 members who are elected for a period of four years in free and secret elections by all Netherlands nationals who have attained the age of 18 years and are not explicitly excluded from voting. The electoral system has been elaborated in the Electoral Act (Kieswet), the result of the poll is calculated under a system of proportional representation . The First Chamber consists of 75 members, elected by the members of the Provincial States (Provinciale Staten) who themselves are directly elected. Parliament has two important tasks: it controls the Government (Regering) and it has legislative powers.

The Government comprises the King and the Ministers (Ministers) (art 42 para 1 Constitution). The Ministers together constitute the Council of Ministers (Ministerraad), more commonly known as the Cabinet (Kabinet) which shall consider and decide upon overall Government policy and promote the coherence thereof (art. 45 Constitution). The Prime Minister (Premier) presides the Council of Ministers. Next to Ministers there are usually a number of State Secretaries (Staatssecretarissen), who

act with ministerial authority in the Minister's place in cases in which he considers it necessary (art. 46 para 2 Constitution). The task of a State Secretary is derived from the Minister's, who may consequently give the State Secretary instructions on how to act.

Officially the King reigns, but he does not govern. The powers attributed to him are exercised through the responsibility of Ministers. This is laid down in article 42 para 2 of the Constitution: "the Ministers, and not the King, shall be responsible for acts of government". The powers given to the King are far-reaching, he is empowered to make regulations by Royal Decree (Koninklijk Besluit, abbr. KB; art. 89 para 1 Constitution), although this power is limited by several articles in the Constitution. Like the Ministers the State Secretaries are independently responsible to Parliament, but without prejudice to the responsibility of the Minister (art. 46 para 2 Constitution).

Parliament has got a number of means at its disposal to exercise its controlling function. Every individual member of Parliament can question Ministers and State Secretaries on statements or memoranda (art. 68 Constitution) while the right of interpellation, a fully-fledged oral debate with a member of the Government, is another way of exercising its controlling powers. Furthermore Parliament has the right of inquiry (recht van enquete, art. 70 Constitution). Lately this right has been used quite often, especially in comparison with earlier times. The latest inquiry was on the Disability Insurance Act (Wet op de arbeidsongeschiktheidsverzekering, abbr. WAO) in 1993. An important element of the parliamentary system is the rule of confidence. This rule requires that Ministers and State Secretaries enjoy both individually and collectively confidence of both Houses of Parliament. Lack of confidence can be shown in various ways, for instance disagreement can be expressed in a vote of censure (motie van wantrouwen) or by voting in favour of an amendment which the Minister has declared unacceptable. Furthermore it can be shown by rejecting the estimates of the State's revenues and expenditures, the so-called right of budget (budgetrecht). Lack of confidence can lead to resignation of either the Minister or State Secretary or the whole Council of Ministers. The rule of confidence is not laid down in the Constitution, it is a rule of customary constitutional law.

Next to controlling the Government Parliament is also involved in the legislative process. Parliamentary legislation is made by Government and Parliament together (art. 81 Constitution). Both the Government and the Second Chamber can propose legislation (art. 82 para 1 Constitution). This right of the Second Chamber is known as the right of initiative (recht van initiatief). The First Chamber does not have a right of initiative. Con-

sultation of the Council of State on all proposed bills is mandatory (art. 73 para 1 Constitution). If a bill is presented it is sent to the Second Chamber, which has the right to amend it (recht van amendement). The Government can also amend Government bills which have not been passed yet by the Second Chamber (art. 84 Constitution). After the bill has been passed by the Second Chamber it is sent to the First Chamber, which can either pass or reject it as it is (art. 85 Constitution). Before the bill has been passed by the First Chamber it can be withdrawn by the Government or the member(s) of the Second Chamber who introduced it (art. 86 Constitution). Once the bill has been passed by the States General it has to be signed by the King. After this has happened it becomes an Act of Parliament (art. 87).

Two other important forms of rules by the central Government are the orders in Council (Algemene Maatregel van Bestuur, abbr. AMvB) and the ministerial regulations (ministeriële verordening). Orders in Council are made by Government alone. They are based on article 89 para 1 Constitution. Limitations to this kind of legislation are laid down in the Constitution as well, para 2 of article 89 reads for instance "any regulations to which penalties are attached shall be embodied in such orders only in accordance with an Act of Parliament", while article 107 para 1 states that "civil law, criminal law and civil and criminal procedure shall be regulated by Act of Parliament in general legal codes without prejudice to the power to regulate certain matters in separate Acts of Parliament". In para 2 of this article the same is regulated in relation to administrative law: "the general rules of administrative law shall be laid down by Act of Parliament". In art. 2 para 1 Constitution is prescribed, that nationality has to be regulated by an Act of Parliament. Ministerial regulations are rules made by individual Ministers. This is normally a form of sub-delegation, Ministers can be authorised to issue regulations, either by statute or by order in Council.

2. Historical development of Netherlands nationality law.

The first regulation of Netherlands nationality was included in the Civil Code which was introduced by King Louis-Napoleon in 1809 (Wetboek Napoleon voor het Koningrijk Holland), a code following the French model. Shortly after the introduction of this code the whole territory of the modern Netherlands became part of the French empire and in 1811 the French Civil Code replaced the existing code. After the French rule had ended in 1813 this code remained provisionally in force with minor modifications in the Kingdom of the Netherlands which was created at the

Congress of Vienna until own codifications were enacted. On 1 October 1838 a new Civil Code (Burgerlijk Wetboek) came into force. Before the introduction of this code Netherlands nationality was regulated by the articles 9, 10, 12, 17, 18, 19, 20 and 21 of the French Code Civil. In the province of Limburg the Netherlands Civil Code came into force on 1 January 1842, so the application of the French Code Civil provisions lasted almost four years longer in that province.

The 1838 Civil Code contained a set of provisions defining who would be Netherlands nationals. According to these provisions Netherlands nationality could be acquired iure sanguinis by descent of Netherlands parents (art. 5 *sub* 2), but another way to acquire this nationality was by birth as a child of parents with permanent residence in the Netherlands or its colonies (art. 5 *sub* 1). The nationality regulations of the 1838 Civil Code were therefore only partly based on *ius sanguinis*. The mentioned provision of art. 5 *sub* 1 gets very near to ius soli: nevertheless there is a difference in comparison to classical *ius soli-regulations*. Not the birth on the territory of the Netherlands was decisive, but the birth as a child of parents with permanent residence in the Netherlands. The content of the 1838 Civil Code provisions were quite simular to those of the French Code Civil. In the French model a regulation of nationality was necessary for the application of the rule prescribing the full entitlement of civil law rights by "all Frenchmen". In the Netherlands, an analogous regulation regarding Netherlands subjects was not really necessary because the Netherlands rule concerning enjoyment of civil law rights referred to "all those who are in the territory of the State" rather than to Netherlands subjects. Nevertheless, the 1838 Civil Code included provisions on nationality which were deemed to apply for *civil law* purposes, parallel to the French ones. Consequently it was considered necessary to have separate legislation for the determination of Netherlands nationality for *public law* purposes, and a corresponding Act was issued in 1850. Basis of the provisions of the 1850 was also the *ius sanguinis* principle (art. 1 *sub* 4), but according to art. 1 *sub* 1 Netherlands nationality in the sense of this Act could also be acquired by birth as a child of parents with permanent residence in the European part of the Netherlands. A remarkable difference in comparison with the Civil Code provisions was, that birth as a child of parents with permanent residence in the colonies of the Netherlands did not entitle to Netherlands nationality in the sense of this Act. For the application of criminal law originally the nationality provisions of the Civil Code were decisive (for example in order to determine whether a person committed high treason, which according to Netherlands criminal law could only be committed by a

Netherlands national). After the introduction of new Penal Code (2) on 1 September 1886 the provisions of the nationality Act of 1850 had to be used. From 1850-1893 Netherlands nationality had a dualistic nature. It was possible that somebody acquired Netherlands nationality for civil law purposes, but did not possess this nationality for public law purposes (and for example therefore had no right to vote for the election of Parliament or to be chosen as a member of Parliament) (3). It happened as well that somebody lost the nationality of the Netherlands in the sense of one nationality regulation, but kept it in the sense of the other regulation (4).

This dualistic regulation of Netherlands nationality was abolished by the Nationality Act of 12 December 1892 (5), governing Netherlands nationality and residence in the Netherlands, which regulated Netherlands nationality until 1985. Between 1893 and 1985 this statute was revised seventeen times (6). The Act of 1892 was based mainly on the ius sanguinis a patre and contained some provisions that could cause statelessness, while it was not in favour of plural nationality.

The original version of the act of 1892 was based on a so-called unitary system regarding the nationality of the members of a family (système unitaire) (7). A wife followed the nationality of her husband in all circumstances. Women could only transfer Netherlands nationality to their children if these were illegitimate and not recognised by a man (art. 1 Nationality Act 1892). A foreign wife who married a Netherlands citizen automatically acquired Netherlands nationality (art. 5 Nationality Act 1892) (8). A Netherlands woman who married a foreigner or a stateless person automatically lost her Netherlands nationality (art. 5 and 7 *sub* 2 Nationality Act 1892). If a foreigner acquired Netherlands nationality, his

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(2) Act of March 1881, *Staatsblad*, 1881, 35.

(3) Hoge Raad 6 July 1852, *Weekblad van het Regt*, 1348.

(4) For example this could happen in case of residence abroad during a long period without the spirit of return to the Netherlands. The civil code provisions only spoke of residence abroad without the spirit of return, the provisions of the nationality statute of 1850 mentioned more precisely "a residence abroad during a period of five years" without the spirit of return. Therefore it could happen, that the nationality for public law purposes was lost, whereas the civil law nationalily was kept for a while.

(5) This Act entered into force on 1 July 1893.

(6) For detailed information see G.-R. DE GROOT, *Personen- en familierecht*, Kluwer, Deventer, loose-leaf commentary, Nationaliteitswetgeving (hereafter cited as: *Commentary*), General remarks, nr. 22.

(7) This expression was used by B. DUTOIT, *La nationalité de la femme mariée*, vol. I, *Europa*, Genève, 1973, *passim*.

(8) G.-R. DE GROOT, *Staatsangehörigkeitsrecht im Wandel*, Köln etc. 1989 (hereafter cited as: *Staatsangehörigkeitsrecht*), p. 418, note 65.

wife acquired this nationality as well (art. 5 Nationality Act 1892), if a man lost his Netherlands nationality, so did his wife (art. 5 and 7 *sub* 1 Nationality Act 1892). Legitimate children of a Netherlands father (and his Netherlands wife) acquired the nationality of the father (art. 1 *sub a* and *b* Nationality Act 1892). An illegitimate child of a Netherlands mother acquired her nationality provided the child was recognised (only) by her (art. 1 *sub c* Nationality Act 1892). If the child was later on recognised by a foreigner it lost the nationality of his mother (art. 1 *sub a* and *c* Nationality Act 1892). An illegitimate child of a Netherlands father acquired Netherlands nationality in case of recognition by the father.

This unitary system was revised in 1936 (9) as a consequence of the Hague Convention on certain questions regarding nationality conflicts of 12 April 1930 (10). A foreign woman who married a Netherlands citizen still automatically acquired Netherlands nationality but a Netherlands wife who married a foreigner or a stateless person did not automatically lose her Netherlands nationality [art. 5 Nationality Act 1892 (1936)]. She retained her Netherlands nationality if she did not acquire a foreign nationality by marriage. A child of a Netherlands mother and a stateless father acquired the Netherlands nationality of its mother if it was born in the Netherlands [art. 2 *sub c* Nationality Act 1892 (1936)]. In principle a married wife still followed the nationality of her husband. If her husband acquired Netherlands nationality, she also acquired this status; if her husband lost his Netherlands nationality, she also did. But one exception was made: if the husband lost his Netherlands nationality, the wife kept her Netherlands nationality, if otherwise she would become a stateless person [art. 5 Nationality Act 1892 (1936)].

In 1953 an important modification was realised in respect of the acquisition of Netherlands nationality by children of foreigners (11). A le-

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(9) Act of 21 December 1936, *Staatsblad* (*Bulletin of Acts, Orders and Decrees*; hereafter abbr. as: *Stb*) 209, in force on 1 July 1937 with retroactivity from 1 July 1893!

(10) *LNTS Bd.* 179, 89; Dutch translation in *Stb.*, 1937, 17, 4-54 and *Tractatenblad* (*Bulletin of treaties*, hereafter abbr. as: *Trb.*) 1967, 73; see on this convention i.a. R. DUTOIT, *La nationalité*, pp. 315-319; J.B. SCOTT, *Observations on nationality*, New York, 1930, pp. 6-91. Compare the Latin-American convention of Montevideo of 26 December 1933; on that convention B. DUTOIT, *Théorie générale. Sources formelles du droit de la nationalité*, in *Jurisclasseur Nationalité*, Paris, 1984, pp. 9, 10. See also J.G. GUERRERO, *La codification du droit international: la première Conférence*, Paris, 1930 and M. LICHTER, *Die Beschlüsse der Haager Kodifikations-Konferenz von 1930 und ihre Berücksichtigung in den nationalen Gesetzgebungen*, in *StAZ*, 1956, pp. 281-286.

(11) Act of 15 May 1953, *Stb.*, 233, in force on 27 May 1953 again with retroactivity from 1 July 1893!

gitimate child acquired Netherlands nationality if it was born to a father who had his residence in the Netherlands at the time of the child's birth whereas the father himself was born to a mother residing in the Netherlands at the time of the birth of her son [art. 2 *sub a* Nationality Act 1892 (1953)]. An illegitimate child which was not recognised by a man, acquired Netherlands nationality if it was born to a mother who had her residence in the Netherlands at the time of the child's birth, whereas she herself was born to a mother residing in the Netherlands at the time of the birth of her daughter. This modification aimed at integrating second generations of foreigners born and living in the Netherlands. The provision contained certain elements of the so-called ius-soli-principle although it is not a perfect example of ius soli. The decisive factor is the parental residence in the Netherlands, not the place of birth; therefore it could be described as an acquisition iure domicilii.

An other important revision of Netherlands nationality law was realised in 1963 (12) as a consequence of the New York treaty on the nationality of married women (13). This treaty laid down the independent status of a married woman in nationality law. As a result of the revision of Netherlands nationality law a foreign wife of a Netherlands national did not automatically acquire the Netherlands nationality of her husband anymore; however she could acquire this status by a simple option declaration [art. 8 Nationality Act 1892 (1963)]. A Netherlands woman who married a foreigner or a stateless person kept her nationality, even in cases where she acquired her husbands nationality by operation of the law [art. 8a Nationality Act 1892 (1963)] (14). The acquisition of the nationality of legitimate children *iure sanguinis* was not modified. A legitimate child ac-

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(12) Act of 14 November 1963, *Stb.*, 467, in force on 1 March 1964.

(13) *UNTS, Bd.*, 309, 65; *Trb.*, 1965, 218; on this convention M.-H. MARESCAUX, *Nationalité et statut personnel dans les instruments internationaux des Nations Unies*, in M. VERWILGHEN (ed.), *Nationalité et statut personnel*, Bruxelles-Paris, 1984, pp. 57-62. See furthermore: Nationality of Married Women, Report submitted by the Secretary-General, United Nations, Commission on the Status of Women, New York, 1950 and Convention on the nationality of married women, historical backgrounds, United Nations, Department or Economic and Social Affairs, New York, 1962.

(14) For Netherlands women, who married a foreigner before this important modification, the transitory provision of art. 28 Nalionality Act 1984 is extremely relevant: "A woman who lost her Netherlands nationality through or in connection with her marriage before the entry into force of this Act, shall acquire Netherlands nationality by making a declaration to this effect within one year of the dissolution of the marriage or of the date on which she learned of such dissolution. Acquisition of Netherlands nationality in this manner shall be retroactive to the date of dissolution of the marriage.".

quired the Netherlands nationality of the father; an illegitimate child not recognised by a foreign father acquired the nationality of the mother; an illegitimate child recognised by a Netherlands father acquired the nationality of his father by the recognition.

Some provisions of the Nationality Act 1892 could cause statelessness. For instance, Netherlands nationality was lost in case of voluntary state service or military service abroad without royal consent (art. 7 *sub* 4 Nationality Act 1892). Furthermore Netherlands nationality was lost by persons born abroad and living abroad during a period of ten years after their 21st birthday, unless they declared that they wanted to retain their Netherlands nationality (art. 7 *sub* 5 Nationality Act 1892).

The Nationality Act 1892 did not favour plural nationality. Netherlands nationality was lost in case of voluntary acquisition of another nationality. Although the 1892 Act did not explicitly lay down this rule, a foreigner who wanted to acquire Netherlands nationality had to give up his previous nationality if he did not automatically lose this nationality. Nevertheless in practice every candidate for a naturalisation was requested to do everything possible to lose his previous nationality (15).

3. Colonial nationality.

During the parliamentary discussion on the Nationality Bill, which was enacted in 1892, the issue of the nationality status of the population in the Netherlands East Indies (Indonesia) became topical. As already mentioned the 1892 bill purported to eliminate the existing dualism in the field of nationality. Its transitory provision prescribed, quite consistently, that all those possessing the status of Netherlands national at the time of the entry into force of the Act would be deemed to be Netherlands nationals under the new Act. Because the Civil Code provided in its definition of Netherlands nationals, that, inter alia, "all persons born in the Kingdom or its colonies, of parents who were themselves there domiciled", were Netherlands nationals, virtually the whole population of the Indonesian archipelago would become "Netherlands nationals" under the new Act with all conseguent rights, inter alia — under certain conditions — the right to participate in parliamentary elections. This was hurriedly prevented by a parliamentary amendment excluding the non-European

(15) See the Guidelines regarding naturalisation of 10 March 1977, *Staatscourant* (*Government Gazette*; hereafter abbreviated as: *Stcrt.*) 1977, p. 81 and the Guidelines or 23 March 1979, *Stcrt.*, 1979, p. 65 revised on 27 January 1981, *Stcrt.*, 1981, p. 20.

population of the Netherlands East Indies from thus becoming Netherlands nationals.

This legislative manoeuvring gave rise to a new question: did the exclusion imply that the colonial population in Netherlands East Indies had become aliens? In order to ensure that the population of the colony would not have the status of an alien, a separate Act, of 10 February 1910, created "the Status of Netherlands subjects other than Nederlander" (16). The creation of a distinct category of nationality for the population of the Netherlands East Indies had become a fact. And so once again two different types of Netherlands nationality existed. This new dualism lasted until 1962. The Act was mainly based on the acquisition of Netherlands nationality by birth as a child of a person with permanent residence in the Netherlands East Indies (art. 1 *sub* 1), but in some exceptional cases the status could also be acquired *iure soli* (art. 1 *sub* 2). The Act remained applicable in Indonesia until it lost its validity there as a consequence of the partition of the body of "Netherlands subjects" between Indonesia and the Netherlands upon the formalisation of the separation of Indonesia from the Netherlands in 1949 (17).

Originally the Act of 1910 was not applicable in Surinam and the Netherlands Antilles (including Aruba), the other Netherlands colonies. The Nationality Act of 1892 was not applicable on these territories either, but the Netherlands population of those territories were not excluded by the transitory provision of the Act of 1892. Therefore all those who acquired Netherlands nationality because of the provisions of the 1838 Civil Code (especially those who were born as children of parents with residence in these colonies), could transfer their nationality to their descendants because of the *ius sanguinis* principle of the 1892 Act. Nevertheless the application of the 1910 Act was extended to the territory of Surinam and the Netherlands Antilles (including Aruba) by Act of 10 June 1927 (18). Aim of this extension was to give this (second class) Netherlands nationality to the children of those not-Netherlands persons who immigrated to these colonies after 1 July 1893. These persons — mainly from British Indian

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(16) Netherlands *Stb.*, 1910 no. 55; Netherlands Indies *Staatsblad*, 1910 no. 296. The usual terminology for a full-rate Netherlands national is "Nederlander". The persons who were deemed to be subject to Netherlands jurisdiction without having Netherlands nationality *status* under the Nationality Act of 1892 were called "Nederlands onderdaan" (Netherlands subject), or more extensivily "Nederlands onderdaan-niet-Nederlander" (Netherlands subject, not being Netherlands national).

(17) Nevertheless the Act remained applicable in Netherlands New Guinea until the relinquishment of Dutch sovereignty in 1962.

(18) *Stb.*, 1927, 175.

and Netherlands East Indian (Javanese) origin — constituted an important part of the population of these colonies.

After the independence of Indonesia the geographical application of the 1892 Act was extended to Surinam and the Netherlands Antilles (including Aruba), while the application of the 1910 Act to these territories was abolished. The nationality status of those who possessed the status of Netherlands Subject, not being Netherlands national was converted into the nationality of the Act of 1892 with retroactivity to the moment of the official recognition of the independence of Indonesia (27 December 1949) (19). After 1951 the geographical application of the Act of 1910 was restricted to Netherlands (Western) New Guinea, a territory which was not transferred to Indonesia, but remained under Netherlands administration. Under pressure of the United States the territory of Western New Guinea was transferred to the United Nations on 1 October 1962.

The Act of 1910 went therefore out of force on that moment (20). The United Nations transferred the territory to Indonesia, where it got the status of province (Irian Jaya); the population of this territory acquired Indonesian nationality.

4. Legislative provisions concerning nationality.

In the Charter of the Kingdom (art. 3 para 1 *sub c*) is mentioned, that the regulation of Netherlands nationality belongs to the legislative power of the Kingdom. In the Constitution of the European part of the Kingdom of the Netherlands is regulated, that the grounds for acquisition and loss of nationality have to be regulated by Act of Parliament (art. 2 para 1 Constitution).

The following regulations regard the acquisition and loss of Netherlands nationality:

a) Kingdom Act of 19 December 1984 (21), known as the Netherlands Nationality Act as amended by Kingdom Act of 19 December 1984 (22) - which entered into force on 1 January 1985 (with the exception of Chapter 6, which came into force on 1 October 1986) and lays down new general provisions governing Netherlands nationality to replace the Act of 12 December 1892 (23) governing Netherlands Nation-

(19) Act of 21 December 1951, *Stb*, 593.
(20) Act of 14 September 1962, *Stb.*, 358.
(21) *Stb.*, 628.
(22) *Stb.*, 629.
(23) *Stb.*, 268.

ality and Residence in the Netherlands. A total revision of the nationality law of the Netherlands was necessary in order to realise equal treatment of men and women in this field of law and to enable the Netherlands to ratify three international treaties: the New York Convention on the reduction of statelessness of 30 August 1961 (24), the Strasbourg Convention on reduction of cases of multiple nationality and military obligations in cases of multiple nationality of 6 May 1963 (25), and the Bern Agreement on the reduction of the number of cases of statelessness of 13 September 1973 (26).

b) Art. 5 of the Act of 2 July 1986 (27), in force on 1 October 1986, which gives the possibility of a retroactive Royal consent in order to avoid a loss of Netherlands nationality caused by art. 7 *sub* 4 of the Act of 1892, which went out of force on 1 January 1985. Art. 7 *sub* 4 knew loss of Netherlands nationality in case of voluntary military service or state service of another country without consent of the Queen of the Netherlands.

c) Royal Decree of 27 January 1986 (28) as modified by Royal Decree of 28 January 1993 (29) regarding the fees for naturalisation.

d) *Memorandum* of the State Secretary of Justice (circulaire van de Staatssecretaris van Justitie) of 29 January 1985 containing instructions on the application of the Nationality Act 1984.

e) *Memorandum* of the State Secretary of Justice (circulaire van de Staatssecretaris van Justitie) of 20 December 1991 (30) regarding the acceptance of dual nationality of persons, who want to acquire Netherlands nationality by naturalisation (31).

f) *Memorandum* of the State Secretary of Justice (circulaire van de

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(24) *UNTS, Bd.*, 989, 175; *Trb.*, 1967, 124; *BGBl.*, 1977 II, 597; *Vertragsslg. AA Bd.*, 54 A 721; see on the New York Convention of 1961, M.-H. MARESCAUX, *Nationalité*, pp. 52-47; compare B. DUTOIT, *La nationalité*, pp. 323-328; J.C. FERNÁNDEZ ROZAS, *Derecho español de la nacionalidad*, Madrid, 1987, pp. 50, M. KILLERBY, *Nationalité et statut personnel dans les instruments intenationaux du Conseil de l'Europe*, in M. VERWILGHEN (ed.), *Nationalité*, pp. 88-91; P. WEIS, *The United Nations Conventions on the reduction of statelessness*, in *ICLQ*, 1962, pp. 1073-1096.

(25) *UNTS Bd.*, 634, 221; *Trb.*, 1964, 4; *ETS*, no. 43; *BGBl.*, 1969 II, 1953; *Vertragsslg. AA Bd.*, 36 A 483. On this convention M. KILLERBY, *Nationalité*, pp. 79-83.

(26) *Trb.*, 1974, 32; *BGBl.*, 1977 II, 597, 613; *Vertragsslg. AA Bd.*, 54 A 717.

(27) *Stb.*, 373.

(28) *Stb.* 18.

(29) *Stb.*, 67, in force on 1 March 1993, see Royal Decree of 22 February 1993, *Stb.*, 113.

(30) *Stcrt.*, 1992, 25, in force on 1 January 1992.

(31) This memorandum was the factual abrogation of art. 9 para 1 *sub b* of the Nationality Act 1984.

Statssecretaris van Justitie) of 31 March 1992 (32), regarding, i.a., modification of the naturalisation procedure, family-names of naturalised persons and the interpretation of art. 8 para 1 *sub b* of the Nationality Act 1984.

Furthermore one should bear in mind, that older nationality provisions are still very relevant, because art. 25 of the 1984 Act states as a transitory provision, that everybody who possessed Netherlands nationality on the moment of commencement of the new Act remains Netherlands national, unless he loses this status under the provisions of the new Act (33).

5. Main principles of the nationality act.

5.1. *Equality of men and women (father and mother).*

The new Netherlands law of nationality is based on a system of *ius sanguinis* a patre et a matre. A child acquires the Netherlands nationality if the father or the mother is a Netherlands national at the time of its birth or is a Netherlands national who died before the birth of the child (art. 3 para 1 Nationality Act 1984). It is clear that this solution causes many cases of plural nationality, for instance if the child acquires another nationality iure sanguinis as well. Unlike for instance the Belgian legislator (34), the Netherlands legislator did not envisage to enact a regulation avoiding plural nationality in case nationality *iure sanguinis* is obtained. Obviously, the Netherlands legislator deemed that the realisation of equality of men and women in the field of the law of nationality was more important than the reduction of cases of multiple nationality.

Furthermore, the new Nationality Act introduced sex equality in respect of the acquisition of the Netherlands nationality by the second generation born to parents living in the Netherlands. A child shall be a Netherlands national if it is born to a father or mother who has residence in the Netherlands, the Netherlands Antilles or Aruba at the time of its birth and who was born to a mother residing in one of these countries (art. 3 para 3 Nationality Act 1984). It is remarkable that this provision is not totally in accordance with the equality of sexes because the child, born to a father or mother living in the Kingdom of the Netherlands at the time of its

(32) In force on 1 April 1992.

(33) Art. 25 reads: "Persons who on the entry into force of this Act already possess Netherlands nationality shall also be Netherlands nationals within the meaning of the Act.".

(34) Art. 8 Belgian Nationality Act; see G.-R. DE GROOT, *Gelijkheid van man en vrouw in het nationaliteitsrecht, Preadvies Nederlandse Vereniging voor rechtsvergelijking*, nr. 25, Deventer, 1977, proposing a similar regulation as now is enacted in Belgium.

birth, but himself/herself born as the child of a father living in the Kingdom, does not acquire Netherlands nationality. For this reason a bill amending art. 3 para 3 is proposed to Parliament.

The equality of sexes is also realised with regard to the consequences of an adoption in the field of nationality. A child becomes a Netherlands national if it is adopted pursuant to a judicial decision in the Netherlands, the Netherlands Antilles or Aruba provided that the adoptive father or the adoptive mother is a Netherlands national on the day that the decision becomes final and that the child is a minor on the day of the decision in first instance (art. 5 Nationality Act 1984).

An equal treatment of men and women in regard to the nationality of their children can also be observed in case of naturalisation of one of the parents. A minor non-Netherlands child of a father or mother to whom Netherlands nationality is granted also receives Netherlands nationality unless a proviso excluding this is made in the Royal decree of naturalisation of the parent (art. 11 Nationality Act 1984). Both the child — provided it has reached the age of twelve years — and its legal representative shall be given the opportunity to express their views on the naturalisation of the child in such a case. Recently all children living abroad or living illegally in the Netherlands are automatically excluded from the naturalisation of their parents (35).

A final consequence of the equality of the parents regarding the nationality of their children is that a minor never loses his Netherlands nationality if and for as long as one parent still possesses the Netherlands nationality (art. 16 Nationality Act 1984). For instance if a parent is naturalised abroad and the minor child is included in that naturalisation the parent will lose his Netherlands nationality because of voluntary acquisition of a foreign nationality (art. 15 *sub a* Nationality Act 1984); nevertheless the child will have dual nationality if the other parent still has the Netherlands nationality.

5.2. *Attitude regarding plural nationality.*

Obviously, the Netherlands legislator deemed the realisation of sexual equality in the law of nationality much more important than the

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(35) "Circulaire van de Staatssecretaris van Justitie" of 31 March 1992: "In het vervolg zal in ieder naturalisatiebesluit een algemeen artikel 2 worden opgenomen, luidende: Het Nederlanderschap wordt onthouden aan de minderjarige kinderen van de in artikel 1 van dit besluit vermelde personen, aan wie geen verblijf voor onbepaalde tijd in Nederland onderscheidenlijk de Nederlandse Antillen en Aruba is toegestaan.".

avoidance of plural nationality. In the Nationality Act of 1984 the reduction of cases involving plural nationality is embodied in just five provisions (art. 9 para 1 *sub b* and the four paras of art. 15) and only one of these provisions was really new in comparison with the previous legislation. And now the bulk of these provisions are to be abolished in the near future. Art. 9 para 1 *sub b*, which states that a naturalisation of an alien who fulfils all conditions laid down in the articles 7 and 8 shall nevertheless be refused if the applicant possessing a foreign nationality has not made every effort to renounce that nationality or is not prepared to make such effort after the effectuation of his naturalisation, unless this cannot reasonably be expected of him, is no longer applied. A Government proposal abolishing this provision will probably be accepted by Parliament and enacted during 1997. Art. 15 *sub d*, which is related to art. 9 para 1 *sub b* since it provides that a person of full age shall lose his Netherlands nationality by revocation of the decree granting the Netherlands nationality if the person concerned fails to make every effort to divest himself of his original nationality after he is naturalised (36), is also to be abrogated.

A question to be raised is whether the Netherlands can abandon the application of art. 9 para 1 *sub b* without violating its international obligations as a consequence of the ratification of the Convention on reduction of cases of multiple nationality and military obligations in cases of multiple nationality (Treaty of Strasbourg) of 1963. However, the provision of art. 9 para 1 *sub b* is not a direct consequence of this treaty (37). Of course it is a provision avoiding cases of multiple nationality and it has the same aim as the treaty of Strasbourg, but this treaty only prescribes that a national of a member state who voluntarily acquires the nationality of another member state loses his previous nationality. The treaty does not ask from a national who obtains another nationality, that he has to give up his original nationality, nor does the treaty prescribe that member states only grant their nationality by naturalisation to persons who are willing to give up the original nationality.

The decision to abandon the provision of art. 9 para 1 *sub b* caused a discussion on the general attitude regarding cases of multiple nationality. Why should it be possible to be naturalised in the Netherlands without renouncing the previous nationality, whereas a Netherlands national who acquires a foreign nationality automatically loses his Netherlands nation-

(36) It has to be underlined that this possibility of revocation of the Royal Decree granting Netherlands nationality was never used.

(37) See also H. RITTSTIEG, *Doppelte Staatsangehörigkeit im Völkerrecht*, in *Neue Juristische Wochenschrift*, 1990, pp. 1401-1405.

ality? Should not the requirements for the acquisition of Netherlands nationality be more or less parallel to the grounds of the loss of Netherlands nationality?

If the Netherlands Government would like to create a perfect parallelism, cancellation of the Strasbourg treaty would be unavoidable (38). However, recently a text of a new second protocol amending the original treaty was accepted. This protocol is open for signature since February 1992 and is very important with respect to the position of the Netherlands Government. The protocol lays down the rule that plural nationality can be accepted under certain circumstances, especially in cases of children born out of mixed marriages, foreign spouses and second generation aliens living in a country (39). Do the amendments of the second protocol go far

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(38) Cancellation of the treaty of Strasbourg is defended by H.U. JESSURUN D'OLIVEIRA, in *Nederlands Juristenblad*, 1991, pp. 1734-1741.

(39) Compare already: Rapport final d'activité adopté par la réunion d'échanges de vues sur la double nationalité (15-18 mars 1988) à l'attention du Comité européen de Coopération juridique pour sa 49ème réunion du 2 au 6 mai 1988:

"20. A l'issue de cet échange de vues, le Président a procédé à un vote sur la question ci-après: êtes-vous en faveur d'un examen plus approfondi au sein d'un Comité d'experts du Conseil de l'Europe de la question de savoir si on peut permettre la double nationalité des conjoints de nationalités différentes et de leurs enfants? Tous les experts participants à la réunion se sont déclarés favorables à un tel examen, à l'exception de l'expert de la République Fédérale d'Allemagne qui s'est abstenu...

26. A l'issue de cet échange de vues, le Président a procédé à un vote sur la question ci-après: êtes-vous en faveur d'un examen plus approfondi au sein d'un Comité d'experts du Conseil de l'Europe de la question de savoir si l'on peut permettre aux migrants de la deuxième génération d'acquérir la nationalité du pays d'accueil sans avoir à renoncer à leur nationalité antérieure? Tous les experts participant à la réunion se sont prononcés en faveur d'un tel examen.

27. En ce qui concerne le mandat spécifique du Comité d'experts à créer pour examiner les deux questions qui ont fait l'objet de l'échange de vues, le Président a proposé que ce mandat soit élargi afin de permettre audit Comité d'experts d'examiner également les problèmes de double nationalité relatifs à d'autres groupes que ceux des mariages mixtes et des migrants de la deuxième génération.

28. Cette proposition a fait l'objet d'un vote: 8 experts se sont prononcés en faveur de la proposition et 8 experts se sont prononcés contre. En raison de cette divergence d'opinions et compte tenu du fait que le mandat spécifique devra etre approuvé par le *CDCJ* et pourrait même, le cas échéant, être élargi par la suite, les experts sont convenus de limiter le mandat proposé aux deux cas qui ont fait l'objet des discussions pendant la réunion."

See also the majority of the "European Council Committee of experts on the naturalization of migrant workers and members of their families and questions of dual nationcllity" in a "draft of a final activity report" from April 1985: "According to the majority, many permanently settled immigrants have a dual national identity, and it would not seem inappropriate that they should, if they wish, be allowed to acquire a

enough to allow the Netherlands Government to abolish the provision that a Netherlands national loses his nationality in case of voluntary acquisition of a foreign nationality? The protocol only allows exceptions to the general rule that voluntary acquisition of a foreign nationality causes the loss of the previous nationality. The Netherlands Government therefore has difficulties with the Strasbourg Convention even if the second protocol would be enforced.

Nevertheless, the Government is hesitating (40) whether it should cancel the treaty at the time when discussions on the amending protocol are in a final fase and, obviously, discussions about an even more thorough revision of the treaty have already started. Would it not be wiser to be a party to the treaty (including the new protocol) and try to influence a thorough revision of the treaty together with other parties to the convention who recentiy changed their general attitude towards plural nationality, like for instance Italy (41)? The decision of the Netherlands regarding this question will depend on the willingness of the other parties to the Strasbourg convention to discuss a revision of the treaty considerably more drastic than the new second protocol. If there is no willingness to negotiate a new treaty, the Netherlands will probably not ratify the second protocol and even cancel the treaty. If the other parties to the treaty are willing to discuss the treaty and to enhance a substantive change (or even a new treaty) within reasonable time Parliament may accept the Netherlands membership to the convention and the second protocol at least during a reasonable period of three or four years. In June 1996 the States General gave parliamentary consent for the ratification of the second protocol, which will take place at the end of July 1996.

Another very principal question is whether it is wise to abolish completely the voluntary acquisition of another nationality as a ground for the loss of the nationality of the Netherlands. Nationality should be the manifestation of a serious link of a person to a certain state. If a person is naturalised in the Netherlands the Government of this country states that this person has such a serious link to the Netherlands; the question whether the same person still has a serious link with another state has to be decided by that state. The Netherlands obviously accept that a person can have serious

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dual nationality also... The majority of the Committee of experts invites member states to re-examine the traditional objections to dual nationality and to consider a possible modification of their legislation and practice in this matter" (cited in T. HAMMAR, *Citizenship and political participation of immigrants*, Stockholm, 1985, pp. 14, 15).

(40) Cf. Tweede Kamer 1990/1991, nr. 21 971, nr. 14, 18: "acht zal worden geslagen op het Verdrag van Straatsburg, dat het kabinet *voorhands* niet wil opzeggen.".

(41) See the new Italian Nationality Act of January 1992.

links with more than one state. If a Netherlands national is naturalised abroad a foreign state indicates that this person has serious links with this country.

The Netherlands then have to decide whether the same person still has a serious link with the Netherlands. The attitude of the Netherlands regarding the possibility of naturalisation of a foreigner in the Netherlands without renouncing his previous nationality shows that the Netherlands accept the possibility that serious links still exist with other countries. But is this always the case? And should a Netherlands national who retained his Netherlands nationality after acquiring a foreign nationality be able to transfer his nationality to his children, even when these children also acquire a foreign nationality? The problem is clear: if we abolish the voluntary acquisition of a foreign nationality as a ground for loss of the nationality of the Netherlands or if we amend this ground for loss of Netherlands nationality considerably, the other grounds for the loss of our nationality have to be modified. otherwise it could happen, that in some cases Netherlands nationality is no longer a guarantee for serious links with the Netherlands.

5.3. *Attitude regarding statelessness.*

The Netherlands are — as already mentioned — party to the New York Convention on the reduction of statelessness of 30 August 1961. In order to avoid cases of statelessness art. 6 *sub b* Nationality Act 1984 gives an option right to Netherlands nationality to stateless persons born on Netherlands territory after a residence in the Netherlands of at least three years. It was refused to attribute Netherlands nationality to those persons, immediately at the moment of birth. This refusal had two reasons: some political parties argued, that in case of such a regulation perhaps many women who will give birth to a potential stateless child, would travel to the Netherlands. Another — more convincing — reason was that such a regulation would attribute Netherlands nationality as well to the children of stateless South-Moluccean persons, who live in the Netherlands since the occupation of the South Moluccean Republic by Indonesia in the early fifties and expressly do not want to acquire Netherlands nationality, because they are still hoping on a new independent South Moluccean Republic.

Another consequence of the aim to avoid statelessness is the provision of art. 14 Nationality Act 1984, saying that Netherlands nationality is never lost, if this would cause statelessness. At the moment a bill proposing an amendment of art. 14 is in the Second Chamber of Parliament. If the bill will be accepted, the Netherlands nationality can be lost by a Gov-

ernement decision, if the nationality was acquired by naturalisation or option declaration based on fraudulous informations, even if such a loss of Netherlands nationality would cause statelessness.

6. International treaties.

6.1. *Multilateral.*

The Netherlands ratified several treaties containing obligations on the field of the law of nationality:

a) Convention of The Hague of 12 April 1930 with Protocol on statelessness (Convention concernant certaines questions relatives aux conflits de lois sur la nationalité) (42); in force for the Kingdom of the Netherlands (43) on 1 July 1937. The Netherlands made the following reservation: "Les Pays-Bas: 1) Excluent de leur acceptation les articles 8,9 et 10; 2) N'entendent assumer aucune obligation en ce qui concerne les Indes Néerlandaises, le Surinam et Curaçao". Nevertheless the nationality law of the Netherlands is in accordance with the content of the mentioned articles. The Netherlands also ratified the Protocol on statelessness (Protocole relatif a un cas d'apatridie) (44); in force for the Kingdom of the Netherlands on 1 July 1937.

b) Convention relating to the status of refugees, Geneva 28 July 1951 (45); in force for the Kingdom of the Netherlands on 1 August 1956 (obligations on the field of nationality law in art. 34).

c) Convention relating to the status of stateless persons, New York 28 September 1954 (46); in force for the Kingdom of the Netherlands on 11 July 1962 (obligations on the field of nationality law in art. 32).

d) Optional protocol concerning acquisition of nationality, belonging to the Convention on Diplomatic Relations, Vienna 18 April 1961 (47); in force for the Kingdom of the Netherlands on 7 December 1984; on the occasion of the accession of the Kingdom of the Netherlands to this convention, the Kingdom declared that it interprets the words "not, solely by operation of the law of the receiving State" in article II of

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(42) *UNTS*, vol. 179, 89.

(43) If hereafter is referred to the Kingdom of the Netherlands the whole Kingdom is meant, not only the European part but also the overseas parts. If only the European part or only (one of) the overseas parts are meant, this will be expressly stated.

(44) *UNTS*, vol. 179, 115.

(45) *UNTS*, vol. 189, 137.

(46) *UNTS*, vol. 360, 117.

(47) *UNTS*, vol. 500, 223.

the optional protocol concerning acquisition of nationality as meaning that the acquisition of nationality by descent is not regarded as acquisition of nationality solely by the operation of this law".

e) Convention on the reduction of statelessness, New York 30 August 1961 (48); in force for the Kingdom of the Netherlands on 11 August 1985.

f) Optional protocol concerning acquisition of nationality, belonging to the Convention of consular relations, Vienna 24 April 1963 (49); in force for the Kingdom of the Netherlands on 16 January 1986; on the occasion of the accession of the Kingdom of the Netherlands to this convention, the Kingdom declared that it interprets the words "not, solely by operation of the law of the receiving State" in article II of the optional protocol concerning acquisition of nationality as meaning that the acquisition of nationality by descent is not regarded as acquisition of nationality solely by the operation of this law.
Furthermore the Kingdom declared, that it interprets Chapter II of the convention as applying to "all career consular officers and employees, including those assigned to a consular post headed by a honorary consular officer".

g) Convention on reduction of cases of multiple nationality and military obligations in cases of multiple nationality, Strasbourg 6 May 1963 (50); in force for the Kingdom of the Netherlands on 10 June 1985.

h) Protocol amending the Convention on reduction of cases of multiple nationality and military obligations in cases of multiple nationality (Strasbourg 6 May 1963), Strasbourg 24 November 1977; in force for the Kingdom of the Netherlands on 10 June 1985; on behalf of the Kingdom the following declaration was made: "...I have the honour to declare, in accordance with the second subparagraph of paragraph 3 of Article 6 of the said Convention, as amended by Article 2 of the said Protocol, that the Kingdom of the Netherlands will, with regard to the age of the persons concerned, consider a person who is a national of a Contracting Party which does not require obligatory military service as having satisfied his military obligations if his ordinary residence in the territory of that Contracting State has at least been maintained from 1 February of the year in which he reaches the age of 17 years until 1 January of the year in which he reaches the age of 25 years".

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(48) *UNTS*, vol. 989, 175.
(49) *UNTS*, vol. 596, 469.
(50) *UNTS*, vol. 634, 221.

i) Additional protocol to the Convention on reduction of cases of multiple nationality and military obligations in cases of multiple nationality (Strasbourg 6 May 1963), Strasbourg 24 November 1977; in force for the Kingdom of the Netherlands on 10 June 1985; on behalf of the Kingdom following declaration was made: "...I have the honour to declare, in conformity with article 3 of the said Protocol, that the central authority which has been designated to receive the transmissions mentioned in article 1 of the Protocol will be the Minister of Justice (P.O. Box 20301, 2500 EH The Hague)".

j) Convention on the exchange of informations regarding acquisition of nationality (Convention concernant l'échange d'information en matière d'acquisition de nationalité), Paris 10 September 1964 (51); in force for the European part of the Kingdom on 17 June 1967; applicable for Surinam between 17 June 1967 and the day of independance of Surinam on 25 November 1975; applicable for Aruba since 1 January 1986, not applicable for the Netherlands Antilles.

k) International Convention on the Elimination of All Forms of Racial Discrimination, New York 7 March 1966 (52); in force for the Kingdom of the Netherlands on 9 January 1972 (obligations in the field of nationality law in art. 5).

l) International Convention on civil and political rights, New York 19 December 1966; in force for the Kingdom of the Netherlands on 10 March 1979 (obligations in the field of nationality law in art. 24).

m) Convention on the reduction of cases of statelessness (Convention tendant à réduire le nombre des cas d'apatridie), Berne 13 September 1973; in force for the Kingdom of the Netherlands. At the occasion of the ratification the Kingdom made the following reservation: "Se référant au premier paragraphe de l'article 4 de ladite Convention, l'Ambassade a l'honneur de déclarer que le Royaume des Pays-Bas fait usage de la réserve, prévue á l'alinéa *b*, et qu'il n'appliquera pas l'article 2 de la Convention". Furthermore the Kingdom made the following declaration: "En outre, l'Ambassade déclare que, en remplacement de la déclaration faite lors de la signature de ladite Convention, en ce qui concerne le Royaume des Pays-Bas, les termes 'Territoire métropolitain' et 'Territoire extramétropolitains', utilisés dans le texte de la Convention, signifient, vu l'égalité qui existe au point de vue du droit public entre les Pays-Bas et les Antilles néerlandaises 'Territoire Européen' et 'Territoire non-Européen'".

n) International Convention on the Elimination of All Forms of

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(51) *UNTS*, vol. 932, 81.
(52) *UNTS*, vol. 660, 195.

Discrimination of Women, New York 18 December 1979 (53); in force for the Kingdom of the Netherlands on 22 August 1991 (obligations in the field of nationality law in art. 9).

The Netherlands originally did ratify the Convention on the nationality of married women, New York 20 February 1957 (in force for the Kingdom of the Netherlands on 16 June 1966) as well, but it was denounced by written notification of 16 January 1992. Therefore the convention ceased to be in force for the Netherlands on 16 January 1993.

The Netherlands did not ratify the European convention on the adoption of children, Strasbourg 24 April 1967 (54). Nevertheless the nationality law of the Netherlands is in accordance with article 11 of said convention, if the adoption was realised by a court decision of a Netherlands court.

The International Convention on the Rights of Children is ratified by the Netherlands in the course of 1994. The nationality law of the Netherlands is in accordance with article 7 of said convention.

The Ministry of Justice of the Netherlands requested the Foreign office to sign the Second Protocol amending the Convention on the reduction of cases of multiple nationality and military obligations in case of multiple nationality of 7 December 1993. The ratification will take place in July 1996.

In the opinion of the Netherlands the law of the European Union influences the power of the member states on the field of nationality. This is shown by the Micheletti decision of the Court of the European Community of 7 July 1992.

6.6. *Bilateral.*

Due to changes of the territory of the Kingdom of the Netherlands it was necessary to conclude bilateral treaties on the allocations of citizen.

After the Netherlands recognised the independence of Indonesia in 1949 a Convention with Indonesia to allocate citizens, was concluded: Overeenkomst betreffende de toescheiding van staatsburgers tussen het Koninkrijk der Nederlanden en de Republiek der Verenigde Staten van Indonesie (Treaty on the allocation of citizens between the Kingdom of the Netherlands and the Republic of the United States of Indonesia). All Netherlands citizens ("Nederlanders" in the sense of the 1892-Act and "Nederlandse onderdanen-niet-Nederlanders" in the sense of the 1910 Act) were divided between the two states. Some groups who got the na-

(53) *UNTS*, vol. 660, 195.
(54) *UNTS*, vol. 634, 255.

tionality of Indonesia, had a right of option on the nationality of the Netherlands. By using this option-right they received the nationality of the Netherlands in the sense of the 1892 Act, even if they possessed before only the status of a "Nederlands onderdaan-niet-Nederlander". All persons who got the nationality of the Netherlands received automatically the nationality in the sense of the 1892 Act, even if beforehand they had the status of "Nederlands onderdaan-niet-Nederlander". Only the inhabitants of Netherlands New Guinea (nowadays a part of Indonesia as Irian Jaya) kept the status of "Nederlands onderdaan-niet-Nederlander".

At the end of World War II the Netherlands annexed some small parts of Germany directly at the Netherlands/German border in order to "correct" the borderline between the two countries. This territory was partly given back to Germany, other parts were officially transferred by Germany to the Netherlands by the Nederlands-Duits grensverdrag (Netherlands-German borderlinetreaty of 9 May 1963 (The Hague) (Trb. 1960, 68; 1963, 198). Art. 11 gave to some Germans living on the territory which was transferred by Germany to the Netherlands an optionright on Netherlands nationality.

On the 25th of November 1975 Surinam became an independent nation. Between the Kingdom of the Netherlands and the new Republic of Surinam a Convention to allocate citizens was concluded: Overeenkomst betreffende de toescheiding van staatsburgers tussen het Koninkrijk der Nederlanden en de Republiek Suriname (Treaty on the allocation of citizens between the Kingdom of the Netherlands and the Republic of Suriname). Some groups who got the nationality of Suriname could use an option-right in order to get back their Netherlands nationality.

7. Description of the grounds for acquisition and loss of Netherlands nationality.

The Netherlands nationality can be acquired on several grounds; According to the Nationality Act 1984 it can be acquired by birth or the establishment of a family relationship (art. 3-5) (in these cases one acquires Netherlands nationality by operation of the law), by declaration of option (art. 6) and by naturalisation (art. 8-13). The loss of Netherlands nationality is regulated in the articles 14 to 16.

7.1. *Acquisition of nationality by birth or the establishment of a family relationship.*

The regulation of the acquisition by birth is primarily based on the *ius sanguinis* principle. Art. 3 para 1 of the Nationality Act states that "a

child shall be a Netherlands national if the father or the mother is a Netherlands national at the time of its birth, or is a Netherlands national who has died before the birth of the child" (55). This is the most common way to acquire the Netherlands nationality. One has to beware though that the Act follows its own definitions of certain terms, which are explained in art. 1 of the Act. The definition of the term mother is not problematic; mother means the woman who bore the child in question (art. 1 *sub c*). The term father however could see on both the biological and the legal father. These do not have to be the same person under Netherlands law. The biological father is he who procreated the child, the legal father is according to the Civil Code either the (*ex*-)spouse of the mother if the child was born during or within 306 days after the dissolution of the marriage, he who recognised the child or he who has become the father of the child by legitimation. The Nationality Act seeks continuity with the concept of the legal father, for the purpose of the Act father means the man with whom a child has according Netherlands family law a family relationship of the first degree, other than by adoption (art. 1 *sub d*).

The problems arising in case of the child being a foundling are regulated in para 2 of art. 3: the child shall be deemed to be the child of a Netherlands national if it was found on the territory of the Netherlands, the Netherlands Antilles or Aruba or on a ship or aircraft registered in one of these countries. In this case it also obtains the Netherlands nationality on the basis of art. 3 para 1 of the Act. This presupposition (*praesumptio iuris sanguinis*) is not absolute. If it becomes apparent within five years from the day on which the child was found, that it does not possess Netherlands nationality, but only a foreign nationality by birth, Netherlands nationality will be lost. But in the case of potential statelessness it keeps Netherlands nationality (art. 14).

Next to the acquisition on the basis of the principle of (a presumed) ius sanguinis art. 3 also knows the acquisition on another basis. Para 3

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(55) This provision is only applicable, if the birth has taken place on or after 1 January 1985. For children of a Netherlands mother and a foreign father born before that date, the transitory provision of art. 27 para 2 Nationality Act 1984 is of importance: "A Non-Netherlands child — including a child adopted in the Netherlands or the Netherlands Antilles — of a woman who is a Netherlands national or who, if she is deceased, was a Netherlands national at the time of her decease, shall acquire Netherlands nationality by making a declaration to this effect, provided the said child has not reached the age of twenty-one years on the entry into force of this Act and is not married and has not been previously married. In the case of children under eighteen years of age the declaration must be made by the mother or — if she is deceased — the statutory representative of the child. This declaration shall be made within three years of the entry into force of this Act.".

reads: "a child shall be a Netherlands national if it is born to a father or mother who is residing in the Netherlands, the Netherlands Antilles or Aruba at the time of its birth and if this father or mother was born to a mother residing in one of these countries at the moment of the birth of her child". This is the so-called third-generation rule. The provision of art. 3 para 3 does not contain a strict *ius soli-regulation*. The provision does not demand that the child was born on Netherlands soil, only that the father or mother resides in the Kingdom (56).

Acquisition of the Netherlands nationality by establishment of a family relationship can be based on either recognition, legitimation or adoption. The acquisition by recognition is regulated in art. 4 para 1, which reads that an alien, i.e. a person who does not possess Netherlands nationality (art. 1 *sub e*), who is a minor shall become a Netherlands national if he is recognised by a Netherlands national as his child. This article only sees at children born out of wedlock from a mother who is not a Netherlands national. If the mother is a Netherlands national the child already possesses Netherlands nationality on the basis of the *ius sanguinis* principle of art. 3 para 1. According to Netherlands law a man can recognise every non-recognised illegitimate child, even if he cannot be the biological father (57). In order to recognise a child a man needs the previous permission of the mother. If the child is recognised it becomes a Netherlands national from the moment of recognition on, but only if the child is still a minor according to the Act. This means that the child has not yet attained the age of 18 and is not married before attaining that age (art. 1 *sub b*). In case of recognition of a child before his birth the child will acquire Netherlands nationality at the moment of birth based on art. 3 para 1. All this is also applicable in case the child is legitimated (*infra*).

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(56) Striking is, that a child born to a father or mother who was born to a father residing in the Kingdom cannot obtain the Netherlands nationality on the basis of this article, especially if one bears in mind that one of the main principles of the new Nationality Act was the realisation of equality of men and women (see para 5.1, *supra*). A bill to solve this discontinuity has recently heen presented to Parliament. Furthermore it is remarkable, that the provision does not explicitly say that on the basis of this provision Netherlands nationality can also be acquired if the decisive parent has deceased before the child was born but was living in the Netherlands at the time of death. See G.-R. DE GROOT, *Staatsangehörigkeitsrecht*, par. 3.2.1. The provision of art. 3 para 3 will not apply to children of foreign diplomatic or consular personnel. See G.-R. DE GROOT, *Staatsangehöirigkeitsrecht*, par. 3.2.6.

(57) Probably a bill modifying this will be send to the Second Chamber of Parliament in the near future. See a press bulletin of the Ministry of Justice published in the *Nederlands Juristenblad*, 1994, 418.

The provision of art. 4 para 1 could present a gap in the Netherlands nationality and immigration law, a gap that, at least in the opinion of the Government, preferably should be closed (58). Recently there have been some cases of abuse of this provision: Netherlands men recognised, after receiving money, foreign illegitimate minors in order to give them Netherlands nationality and thus free access to the Netherlands. As a reaction on these cases of abuse the Government presented a bill to Parliament in order to modify the consequences of a recognition of a foreign minor in the field of nationality (59).

The provision of art. 4 para 1 can be criticized for other reasons as well. It may happen that an older foreign minor acquires Netherlands nationality without his own consent because of recognition by a Netherlands national. This leads to problems, if the acquisition of the nationality of the Netherlands causes the loss of his previous nationality (regularly the nationality of the mother). It has been suggested to make the acquisition of the Netherlands nationality by recognition dependent on the previous consent of a foreign minor, who has reached the age of twelve and on the previous consent of the mother, if the acquisition of the Netherlands nationality would cause the loss of her nationality. However, in case of the mother's refusal a court decision on this point should be possible.

Acquisition of the Netherlands nationality by legitimation is regulated in art. 4 para 2: an alien who is a minor shall become a Netherlands national if he is legitimated by a Netherlands national, notwithstanding the fact that he has not been recognised. According to art. I: 215 Civil Code a child can be legitimated if the child is recognised and if the man who has recognised the child and the mother of the child contract a marriage, or if a man recognises the illegitimate child of his wife. In some exceptional cases legitimation can take place without recognition. The first example is a case, where a child was born after the death of his father, who planned to marry the mother and knew about the pregnancy. In such a case the King can give letters of legitimation: then the child will be legitimated without being recognised. A second example is when a child has heen legitimated according to foreign law that does not demand recognition as a condition for this legitimation. In some cases this legitimation has to be recognised in the Netherlands according to the CIEC-agreement on the legitimation by marriage (Roma 10 September 1970) (60). If the child is le-

(58) *Kamerstuk*, 1987/88, nr. 20 436; *Personeel Statuut*, 1988, pp. 21-27.

(59) Against such a modification of art. 4 Nationality Act: M. TRATNIK, *Een overheid, die spoken ziet*, in *NJB*, 1989, pp. 296-298. See also M.J.C. KOENS, in A. PITLO, GR. VAN DE BURGHT, M. ROOD-DE BOER, *Het personen-en familierecht*, pp. 13.

(60) *Trb.*, 1972, 61; in force for the Netherlands since 13 July 1977.

gitimated it becomes a Netherlands national from the moment of legitimation on, but only if the child is still a minor according to the Act. A bill proposing a modification of the consequences of legitimation in the field of nationality law was sent to the Second Chamber of Parliament in 1993.

The provision of art. 4 para 2 does not clearly express that Netherlands nationality can also be acquired by legitimation even if the father has deceased before the legitimation but this view is defended in commentaries on the new Nationality Act.

It is also not totally clear if a child acquires Netherlands nationality as well if it becomes, by recognition or legitimation, the child of an alien and the conditions of art. 3 para 3 for an acquisition of Netherlands nationality *iure domicilii* are fulfilled. But this view has been defended in commentaries as well (61).

Netherlands family law does not yet know the possibility of a family relationship between an illegitimate child and his biological father to be established by a court decision on fatherhood. Probably this possibility will be created in the near future. It is obvious that such a decision should also estahlish the Netherlands nationality, just as a recognition does (62).

A third ground for acquiring the Netherlands nationality by establisment of family relations is the adoption. In Netherlands family law adoption leads to the situation where all family and patrimonial relations between the child and his 'former' family are cut. From legal point of view the child obtains the status of legitimate child of the adoptive parents. This is also carried through in the nationality law. A minor becomes a Netherlands national if it is adopted by a Netherlands adoptive father or mother. The adoption has to take place by a judicial decision in the Netherlands, the Netherlands Antilles or Aruba. Decisive is whether the adoptive father or mother is a Netherlands national on the day that the judicial decision on the adoption becomes final, whereas the adoptive child has to be a minor on the day of the judicial decision in first instance.

7.2. *Acquisition of nationality by declaration of option.*

Option can be seen as a middle course between acquisition by operation of the law and acquisition by naturalisation. A person who has an op-

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(61) G.-R. DE GROOT, *Commentary on art. 4; Nationaliteitswetgeving*, G 19; M.J.C. KOENS, in A. PITLO, GR. VAN DE BURGHT, M. ROOD-DE BOER, *Het personen-en familierecht*, p. 16. A different opinion has J. DEKKER, *Rijkswet op het Nederlander-schap*, in *Burgerzaken*, 1984, p. 85.

(62) G.-R. DE GROOT, *Staatsangehörigkeitsrecht*, pp. 202, 203 (par. 3.2.5).

tion-right on the nationality of the Netherlands can decide himself whether he wants to become a Netherlands national or not. According to art. 6 para 1 *sub a*, opting for Netherlands nationality is available to aliens over the age of majority (but under 25) who were born in the Netherlands and have lived in this country since their birth. This article sees to the so-called second gerteration of aliens living in the Netherlands. These people are thought to be so closely connected with the Netherlands that they had to be given a right of option. Stateless persons, persons who have no nationality or whose nationality cannot he established (art. 1 *sub f*), can also opt for the Netherlands nationality, provided they fulfil the conditions laid down in art. 6 para 1 *sub b*: the alien has to be born on Netherlands territory, he has to be younger than 25 years of age, he had his permanent or actual place of residence in the Netherlands, the Netherlands Antilles or Aruba for at least three years and he has to be stateless since his birth.

Even though a right of option for the second generation of aliens and for stateless aliens in the Nationality Act of 1984 was an improvement in comparison with the previous legislation (Nationality Act of 1892) the regulation leaves room for even further improvernents. In the first place the right of option mentioned in art. 6 para 1 *sub a* should not be dependent on the place of birth of the person concerned, but on the place where the parents were living at the time of birth. This would be in conformity with art. 3 para 3, in which the residence of (one of) the parents and the mother of this parent is decisive. Furthermore, the fact that the person concerned would have lived abroad between the time of birth and the date of compulsory education (according to the Netherlands legislation: the month after the fifth anniversary), should in any case be irrelevant for the granting of this right of option. The circumstance of having spent the whole time of compulsory education in the Netherlands however, should be decisive in this respect. The reason to grant an option-right is that these people are thought to be closely connected with the Netherlands. This close connection will normally not exist in the period before the compulsory education, but it will in most cases come into existence during the period of compulsory education. It is also most likely that integration will for a great part take place during this period. From this point of view spending the whole time of compulsory education in the Netherlands would be a better criterion. The age of eighteen at which this right of option becomes valid represents a welcome change in the law because it contributes to the prevention of plural nationality. However it could also be argued that the beginning of this right of option should be granted at the age at which compulsory school education ends (according to the Netherlands legislation at the sixteenth anniversary), and even to grant the right

of option on Netherlands nationality to each person who is born abroad but has spent the whole period of compulsory education in the Netherlands (63); Setting an age limit with respect to the granting of the right of option for persons born in the Netherlands is indefensible and the provisions concerned should therefore be repealed. The reason for the introduction of this age limit of 25 years was to avoid cases, in which a person would wait with the exercise of his option right until the moment, that he could not be enforced anymore to fulfil military service. If a person does not use his option right for this reason and he applies for naturalisation after having reached an age, at which no military service is requested anymore, there normally is no reason to refuse his request of naturalisation.

The right of option granted by art. 6 para 1 *sub b* to stateless children cannot be made exclusively dependent on the parents residence at the time of birth of a stateless child, because this would violate art. 1 and 3 of the New York Convention on the reduction of statelessness of 1961. These articles of the convention oblige member states to grant their nationality to stateless persons born on the territory of their country. This right of option should — except to the persons already mentioned in the provision — therefore also be granted if the stateless child is born abroad whilst one of the parents lives in the Netherlands. Furthermore, the law should be changed in such a way that a child born in the Netherlands (or a child born abroad, having a parent living in the Netherlands at the time of birth) can also opt for Netherlands nationality if the child is not a stateless person at the moment of his birth, but would become stateless before reaching the age of eighteen (64).

According to Netherlands law a declaration of option can be made orally without any formality. Of course the declaration has to reach the competent authorities. Normally these authoritities will make an official document, which will be signed in order to prove the declaration, but if such a document does not exist the declaration can be proved by all other means. If a declaration was made, but not all the conditions giving a right to opt were fulfilled, Netherlands nationality is not acquired. If all conditions were fulfilled and the declaration can be proved, although no document exists, Netherlands nationality is nevertheless acquired.

Recently a bill was proposed to Parliament, which introduces several new option rights. The new bill also modifies the procedure, which has to be followed if one wants to exercise an option right.

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(63) G.-R. DE GROOT, *Staatsangehöbrigkeitsrecht*, para. 3.3.3.1 under *a* and para. 3.3.3.2 under *c*.

(64) G.-R. DE GROOT, *Staatsangehöbrigkeitsrecht*, para. 3.3.3.1 under *b*.

7.3.1. *Acquisition of nationality by naturalisation.*

Naturalisation is the most complicated way to obtain Netherlands nationality. Here one does not obtain this nationality by the simple operation of the law or by simply making a declaration of option, but the Ministry of Justice has to make the decision of granting Netherlands nationality to an individualised person. It is often stated by the Government that naturalisation is a right and not a favor; if somebody meets certain conditions he obtains Netherlands nationality. However this can only be true if these conditions are objective criteria which leave no room for policy considerations. Nevertheless we will see later, that notwithstanding the fact that naturalisation is presented as a right, naturalisation still can be refused on policy grounds.

The Queen, on the recommendation of the Minister of Justice, grants Netherlands nationality to aliens who request this (art. 7 para 1). This granting takes the form of a Royal Decree. At the moment of signature by the Queen Netherlands nationality is acquired. According to Netherlands nationality law neither an announcement of the Royal Naturalisation Decree nor an oath of fidelity is required. Decisions refusing or holding over applications for Netherlands nationality are taken by the Minister of Justice and thus will not be taken by a Royal Decree but by a ministerial decision (art. 9 para 4). According to art. 9 para 3 a decision on an application shall be taken within one year of the submission of the application. However such a decision may be postponed for a maximum of two times a period of six months. Appeal against either postponement or refusal is regulated in the new General Administrative Law Act (Algemene wet bestuursrecht), which came into force on 1 January 1994.

The general conditions to acquire Netherlands nationality are laid down in the article 8. According to art. 8 para 1 the requirements the applicant has to fulfil to be eligible for the grant of Netherlands nationality are the following: he has to be of full age (art. 8 para 1 *sub a*); his residence in the Netherlands, the Netherlands Antilles or Aruba for an unlimited period does not meet with any objection (art. 8 para 1 *sub b*); he has to have had his permanent or habitual residence in the Netherlands, the Netherlands Antilles or Aruba for at least five consecutive years prior to the application (art. 8 para 1 *sub c*); he must be integrated into society in the Netherlands, the Netherlands Antilles or Aruba, inter alia manifested by the fact that he has a reasonable knowledge of the Dutch language or, if he is a resident of the Netherlands Antilles or Aruba, of the language in common use on the island on which he resides (art. 8 para 1 *sub d*). Para 2 immediately lays down an exception to the 'five years'-condition of para 1 *sub c*. The residence-requirement is not applicable to persons who have

once possessed either Netherlands nationality or the status of Netherlands subject, not being Netherlands national, or have been married to a Netherlands national for at least three years, or since coming of age have become the child of a Netherlands national by recognition or legitimation, or have been adopted in the Netherlands, the Netherlands Antilles or Aruba by parents of whom at least one possesses Netherlands nationality (65). These categories of applicants can be naturalised even if they do not reside in the Netherlands, the Netherlands Antilles or Aruba. However art. 9 para 1 *sub c* contains an exception to this rule: if the applicant is resident in the country of which he is a subject his application will be refused. To make it even more complicated art. 10 makes, inter alia, an exception to this exception: the Queen may in exceptional cases grant Netherlands nationality deviating from art. 8 para 1 *sub a, c* and *d* and art. 9 para 1 *sub c.*

In the case of persons who have been resident in the Netherlands, the Netherlands Antilles or Aruba for a total period of at least ten years, the period referred to in para 1 *sub c* is shortened to two years (art. 8 para 3) and to three years in the case of unmarried persons who have lived with an unmarried Netherlands national for at least three years having a permanent relationship other than marriage (art. 8 para 4). Para 4 sees at all cohabitation relations in which the partners are not married, regardless whether they are hetero-or homosexual.

The condition of integration is probably one the vaguest conditions in the Nationality Act, while according to the explanatory *memorandum* it is also the main condition to grant Netherlands nationality. But this *memorandum*, like the Act itself, does not give any exact criterion from which integration appears. It only gives some indications of integration in Netherlands society, like membership of Netherlands clubs or unions, marriage with a Netherlands national. Even where the Act lays down the exact criterion of reasonable knowledge of the Dutch larguage, it can only be described as being vague. In practice this knowledge is tested by a police-officer, at whose discretion it is to decide whether the applicant has a reasonable knowledge of the language (66). Furthermore policy considerations can play a role in deciding whether the knowledge is reasonable or not. This is an unsatisfactory situation since naturalisation thus easily becomes a favor and not a right.

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(65) Minors who are recognised, legitimated or adopted by a Netherlands national acquire Netherlands nationality under art. 4 or art. 5.

(66) Therefore some political parties want the introduction of a kind of state examinition in order to check the command of the Dutch language.

If an applicant fulfils all the conditions laid down in art. 8 he will be eligible for the grant of Netherlands nationality. This nationality will nevertheless be refused to an eligible applicant on the grounds mentioned in art. 9). These grounds are the following: *a*) there is severe suspicion, on the ground of his behaviour, that the applicant constitutes a danger to public order, public morals, public health (67) or the security of the Kingdom (art. 9 para 1 *sub a*); *b*) an applicant possessing a foreign nationality has not made every effort to renounce that nationality or is not prepared to make such effort after his naturalisation, unless this cannot reasonably be expected of him (art. 9 para 1 *sub b*); *c*) the applicant to whom one of the exceptions referred to in art 8 para 2 applies is resident in the country of which he is a subject (art. 9 para 1 *sub c*, *supra*).

Art. 9 para 1 *sub a* does not demand that the applicant constitutes a danger to public order, public morals, public health or the security of the Kingdom, but only that there is severe suspicion that he constitutes a danger. Again this is very vague, even though this suspicion should be based on facts according to the explanatory *memorandum*, but even in that case it leaves too much room for interpretation. Besides this article seems to be rather superfluous since the residence in the Netherlands, the Netherlands Antilles or Aruba for an unlimited period of an applicant who is believed to constitute a danger to public order, public morals, public health or the security of the Kingdom will normally meet with objection, and thus the applicant will not fulfil the condition of art. 8 para 1 *sub b*.

If the applicant is an *ex*-Netherlands national who has lost his Netherlands nationality as a consequence of art. 16 para 1, his application may only be refused on the grounds laid down in art. 9 para 1 *sub a* if he has been convicted of a criminal offence against the security of the Kingdom or has been sentenced to a term of imprisonment exceeding five years for any other criminal offence during the ten years preceding the submission of the application (art. 9 para 2). Here mere beliefs are not sufficient, only facts play a role. This para is applicable to an applicant who has lost his Netherlands nationality as a minor because he was recognised, legitimated or adopted by an alien, because his father or mother acquired another nationality of his or her own free will, because his father or mother lost his or her Netherlands nationality or because the applicant

(67) The explanatory memorandum explains, that nevertheless serious illness does not constitute a ground for refusal of an application. The aim of this ground for a refusal (danger for public health) is to enable the Government to refuse application of drug dealers.

acquired the same nationality as his father or mother in his own right as a minor (art. 16, para 1, *infra*).

According to art. 9 para 1 *sub b* Netherlands nationality will be refused to an applicant possessing a foreign nationality if he has not made every effort to renounce that nationality or is not prepared to make such effort after his naturalisation. In practice the exception clause mentioned in that same article "unless this cannot reasonably be expected of him" was very often used by the Government, not only in cases involving refugees but in all cases where an applicant expected problems if he would renounce his nationality. The renouncement of his nationality was also waived if the applicant would suffer financial disadvantages. Furthermore many aliens living permanently and legally in the Netherlands regarded the demand of renouncement as excessive. Because the Government wanted to promote the naturalisation of aliens living in the Netherlands for several years, it proposed to abandon the requirement that aliens have to renounce their nationality in order to obtain Netherlands nationality. In December 1991 the Government announced officially that the provision of art. 9 para 1 *sub b* will no longer be applied (*Memorandum* of the State Secretary of Justice of 20 December 1991). On the 25th of February 1993 a bill proposing — inter alia — the abolishment of art. 9 para 1 *sub b* was submitted to Parliament (68). This proposal will probably be accepted by Parliament and enacted at the end of 1996.

According to art. 10 the Queen may grant Netherlands nationality deviating from art. 8 para 1 *sub a, c* and *d* and art. 9 para 1 *sub c*. This means that the Queen may grant Netherlands nationality even if the applicant is not of full age, if he has not had his permanent or habitual place of residence in the Netherlands, the Netherlands Antilles or Aruba for at least five consecutive years prior to the application, if he is not integrated into society in the Netherlands, the Netherlands Antilles or Aruba or if he is still resident in the country of which he is a subject and thus cannot obtain Netherlands nationality on the ground mentioned in art. 8 para 2. In all these cases it is in the discretion of the Queen to grant Netherlands nationality, but she must ask the opinion of the Council of State of the Kingdom. According to the explanatory *memorandum* naturalisation *ex* art. 10 will only be granted if it is in the interest of the State or if other important interests of the Netherlands, the Netherlands Antilles or Aruba are served, like on the field of international or cultural relations. Furthermore humanitarian reasons can lead to a naturalisation *ex* art. 10.

(68) Bill nr. 23 029 (*R* 1461).

Next to acquiring Netherlands nationality by birth, recognition, legitimation, adoption or by naturalisation a minor can also obtain Netherlands nationality because (one of) his parents has acquired this nationality. The acquisition of the Netherlands nationality of the minor depends on the acquisition by (one of) the parents. This dependent acquisition is regulated in art. 11 para 1, which reads: "A minor non-Netherlands child of a father or mother who is granted Netherlands nationality shall also receive Netherlands nationality unless a proviso excluding this is made in the decree. Both the child — providing it has reached the age of twelve years — and its legal representative shall be given the opportunity to express their views on the naturalisation of the child in such a case".

It is possible that in the decree granting Netherlands nationality the surname or forename of the applicant is established or altered (art. 12). The name will be established if the applicant has no name or if the correct spelling of his name cannot be determined (art. 12 para 1). The name may be altered if this is in the interest of the integration of the applicant, who has to give his permission for such an alteration (art. 12 para 2). Furthermore the name of the applicant shall where necessary be transliterated into the characters in use in the Netherlands.

Finally art. 15 provides that rules may be laid down by general administrative order concerning the fee owed in respect of the granting of Netherlands nationality, the cases in which full or partial exemption may be granted, and the way in which payment must be made. At the moment the fee is set at 500 Dutch guilders (69).

7.3.2. *Criticism on the rules of naturalisation.*

As we have already seen there is still a lot of room for criticism on the regulation of the Netherlands nationality. Especially the rules on naturalisation meet with a number of objections.

In the first place integration as required in art. 8 para 1 *sub d* should not be a necessary condition for naturalisation since this condition is too vague (70). Knowledge of the Dutch language, or any other language typical for the place of residence (71) in the Netherlands, should be made a separate condition for naturalisation. Decisive in this respect should not be

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(69) Royal Decree of 28 January 1993, *Stb.*, 67 modifying the Royal Decree of 27 January 1986, *Stb.*, 18.

(70) G.-R. DE GROOT, *Staatsangehörigkeitsrecht*, para. 3.3.4.5.

(71) One should bear in mind, that the Frisean language is recognised as an official language — also in relations with authorities — within the province of Friesland. This fact must have consequences for the conditions of a naturalisation as well.

the ability to master the language in written or oral form, but the ability to communicate in one of these languages (72). Art. 8 para 1 *sub d* should be amended accordingly.

Next to this, art. 8 should be extended with the rule that the application for naturalisation of a person who has been treated as a Netherlands citizen during a period of more than five years, whilst this treatment has not been due to any unlawful behaviour of the applicant, cannot be rejected (73). Furthermore, it should he made clear which authorities have the power to decide whether there is any objection to an indefinite stay in the Netherlands and on which criteria these authorities' decision should exactly depend (74).

Another article that meets with extensive criticism is art. 9 para 1. Most criticism regards the condition that the applicant should do everything possible to lose his old nationality as laid down in *sub b* of this article. As we have seen this condition is to be abolished. Furthermore the regulation of art. 9 para 1 *sub a* should be amended in such a way that an application for naturalisation can only be rejected if the applicant has been convicted within ten years prior to the application for certain crimes to be mentioned in the Nationality Act, or if such a conviction takes place during the procedure of naturalisation. An application for naturalisation should also be rejected, if, at the time of application, the applicant is in prison serving a sentence ordered more than ten years ago. If criminal proceedings have been started against the applicant, a suspension of the procedure of naturalisation should be possible (75). Art. 9 para 2 should also be extended in such a way that an application for naturalisation by an *ex*-Netherlands national can be rejected if such a conviction as is referred to in that article occurs during the procedure of naturalisation (76). Also the regulation that an application will be refused if the applicant is resident in the country of which he is a subject (art. 9 para 1 *sub c*) should be repealed. According to the government of the Netherlands in the explanatory *memorandum* international law forbids the naturalisation of a person who lives in the country which nationality he possesses. But such a rule of international law does not exist. An indication against the existence of such a rule already follows from the fact that art. 10 of the Nationality Act allows to make an exception on the rule of art. 9 para 1 *sub c*. The discrimination of

(72) G.-R. DE GROOT, *Staatsangehörigkeitsrecht*, para. 3.3.4.6.
(73) G.-R. DE GROOT, *Staatsangehörigkeitsrecht*, para. 3.3.3.1 under *e*.
(74) G.-R. DE GROOT, *Staatsangehörigkeitsrecht*, para. 3.3.4.4.
(75) G.-R. DE GROOT, *Staatsangehörigkeitsrecht*, para. 3.3.4.7.
(76) G.-R. DE GROOT, *Staatsangehörigkeitsrecht*, para. 3.3.4.7.

aliens living in the country of which they are nationals in comparison to aliens living in another country made by the mentioned provision can not be justified by any reason.

Art. 10 also meets with objections since its wording is unnecessarily complicated. It would suffice if naturalisation would be made possible, regardless of the conditions of the articles 8 and 9, but after consultation with the Council of State of the Kingdom.

Art. 11 would be improved if amended in such a way that naturalisation of a parent will only apply to the minor children of this parent, if a special application has been made for this purpose. In such cases naturalisation of children who have reached the age of twelve should, in principle, only take place if the child consents. Also the consent of the person exercising parental authority (i.e. custodian or guardian) and the parent who is not exercising his parental authority should be required, if the child would lose the nationality of the parent who is not exercising his parental authority. If the consent of the person exercising parental authority is not given, a court decision to grant consent should be possible. If the child does not consent to naturalisation with the parent, a court decision to naturalise should only be possible if the child would not lose its old nationality (77).

Finally art. 13 should be repealed: naturalisations should be free of charge. The nationality of a country should be granted to each person, who has close ties to that country notwithstanding whether he is able and willing to pay for his naturalisation.

7.4. *Loss of nationality.*

In the Nationality Act the articles 14 to 16 deal with the loss of Netherlands nationality. The three goals of the Nationality Act are also visible here: the avoidance of both plural nationality and statelessness and the equal treatment of sexes. The avoidance of statelessness is best seen in art. 14 para 2: "Netherlands nationality can not be lost on any ground whatsoever if this would lead to statelessness" (78).

A person of full age can lose Netherlands nationality on the following grounds: the family relation from which this nationality was derived ceases (art. 14 para 1), by voluntary acquisition of another nationality (art. 15 *sub a*), by making a declaration of renunciation (art. 15 *sub b*) or by a long stay in another country (art. 15 *sub c*). Next to these grounds the decree granting Netherlands nationality can be revoked (art. 15 *sub d*).

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(77) G.-R. DE GROOT, *Staatsangehörigkeitsrecht*, para. 3.3.6.

(78) A bill proposing a modification of this article is presented to the Second Chamber of Parliament.

If the family relation from which a child has derived his Netherlands nationality ceases he will lose his Netherlands nationality. Family relations may cease because the father denies the paternity, because the adoption is revoked or because the recognition appears to be void.

According to art. 15 *sub c* a long stay in another country can also be a ground for loss of Netherlands nationality. If a person, after coming of age, has his residence for a continuous period of ten years outside the Netherlands, the Netherlands Antilles or Aruba in the country of his birth and of which he also is a national he loses his Netherlands nationality. However an exception to this ground for loss is made for persons in the service of the Netherlands, the Netherlands Antilles or Aruba or an international organisation at which the Kingdom is represented, and the spouses of persons in such service (79). This exception does not apply to persons in the service of Netherlands multinationals.

Art. 15 *sub d* lays down as a ground for the loss of Netherlands nationality the revocation of the decree granting Netherlands nationality. However this may only take place if the person concerned fails, after his naturalisation, to make every effort to divest himself of his original nationality. This article is a sanction against not fulfiling the requirement laid down in art. 9 para 1 *sub b*: an applicant possessing a foreign nationality has to make every effort to renounce that nationality or be prepared to make such effort after his naturalisation, unless this cannot reasonably be expected of him. However this provision has not been applied for a long time (*supra*) and a bill proposing the abolishment of art. 9 para 1 *sub b* will probably be accepted by Parliament at the end of 1996. Thus art. 15 *sub d* has also become without any meaning and will be abolished as well. In fact art. 15 *sub d* was never applied.

Minors shall lose the Netherlands nationality on the following grounds: the family relation from which this nationality was derived ceases (art. 14 para 1, *supra*); the minor is recognised, legitimated or adopted by an alien and he thereby acquires the nationality of the alien or already possesses it (art. 10 para 1 *sub a*); his father or mother acquires another nationality of his or her own free will and the minor thereby also acquires the foreign nationality or already possesses it (art. 16 para 1 *sub b*); his father or mother loses his or her Netherlands nationality pursuant to art. 15 *b*, *c* or *d*

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(79) Art. 26 Nationality Act 1984 contains following transitory provision: "With reference to Netherlands nationals who are resident outside the Kingdom on the date on which this Act enters into force, the period of time referred to in section 15 *c*) shall run from the said date.".

(art. 16 para 1 *sub c*); or — finally — the minor acquires the same foreign nationality as his father or mother in his own right (art. 16 para 1 *sub d*). However Netherlands nationality will never be lost if this would lead to statelessness (art. 14 para 2) and for as long as one of the parents possesses Netherlands nationality (art. 16 para 2). Thus a minor can only lose his Netherlands nationality if neither his father nor his mother possesses Netherlands nationality (anymore).

On the area of the loss of Netherlands nationality the Act can also be improved. Even though art. 15 *sub a* is in conformity with art. 1(1) of the Treaty of Strasbourg of 1963, an amendment on the provisions on the loss of Netherlands nationality in the case of voluntary acquisition of a foreign nationality would be desirable. Persons living in the Netherlands should not lose Netherlands nationality after acquisition of a foreign nationality. Persons living abroad should, however, lose Netherlands nationality after the acquisition of a foreign nationality, unless this is the nationality of another member state of the EC or of the Council of Europe, or if, before acquiring the foreign nationality, the Netherlands citizen concerned has made a declaration that he/she wishes to keep Netherlands nationality. Such a declaration establishes continuity of Netherlands nationality for a period of ten years. A repetition of this declaration within this period establishes an extension of another ten years (80).

Art. 15 *sub c* should include at least one exception for other member states of the EC or of the Council of Europe, or there should be a possibility of preventing the loss of Netherlands nationality by means of a declaration. Furthermore, for the prevention of the loss of Netherlands nationality it should suffice to be working for a Dutch company or to have a job as a result of mediation by the Netherlands government (81).

In general a possibility should be created to repeal a naturalisation obtained by forgery or deceit. However this deprivation should only be allowed within a period of five years after the date of naturalisation.

Art. 16 para 1 *sub a* should be repealed (82).

7.5. *Establishment of Netherlands nationality.*

In the Nationality Act, there also is a chapter on the establishment of Netherlands nationality. It can happen that the Netherlands nationality of

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(80) G.-R. DE GROOT, *Staatsangehörigkeitsrecht*, para. 3.4.2.
(81) G.-R. DE GROOT, *Staatsangehörigkeitsrecht*, para. 3.4.4.
(82) G.-R. DE GROOT, *Staatsangehörigkeitsrecht*, para. 3.4.

a certain person is disputed, in most cases it will be the administration who disputes this nationality. If this happens the articles 17 to 20 give rules on how Netherlands nationality has to be established. In these articles a distinction is made between the establishment of Netherlands nationality in cases instituted before a judicial body or administrative appeals tribunal and cases instituted other than before such a body or tribunal. The former cases are regulated in art. 20, the latter in the art. 17-19.

According to art. 17 any person who has an immediate interest may submit to The Hague District Court or, if he is resident in the Netherlands Antilles or Aruba, the Court of Justice of the Netherlands Antilles and Aruba, an application for an order confirming either that he does or that he does not possess Netherlands nationality. Such an application may also be made for an order establishing whether the person concerned did or did not possess Netherlands nationality at a certain time, and it may also be made with respect to a deceased person.

If an application for such an order is submitted to the Hague District Court or the Court of Justice of the Netherlands Antilles and Aruba, this court has to consult the Public Prosecutions Department. In the case of the Hague District Court the procedural rules to be followed are indicated: the articles 429d, 429f to 4291, 429s and 429t of the Code of Civil Procedure shall apply (art. 18 para 1). Against such a decision the applicant and any other interested party can only appeal in cassation (art. 18 para 2). An order which is made under art. 17 and has become final shall be binding on all bodies charged with the enforcement of any statutory regulations (art. 19).

Art. 20 sees at the situation where it is uncertain whether a person, who is involved in a case instituted before a judicial body or administrative appeals tribunal in either part of the Kingdom, possesses Netherlands nationality or possessed it at an earlier date. If this case is instituted before a judicial body, the court in question may seek the advice of the Minister of Justice on the matter (art. 20 para 1). If the case is instituted before an administrative appeal body (i.e. a higher administrative body within the administration, not being an administrative tribunal) and there is uncertainty with regard to the Netherlands nationality of the person involved in the case, the tribunal has to hold over the case and request the advice of the Minister of Justice (art. 20 para 2). Even though the request for advice is mandatory in this case, the advice is not binding. Para 3 of art. 20 states that the proceedings shall be resumed immediately upon receipt of the advice of the Minister.

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